

Notice of Allowability

Application No.

10/642,399

Examiner

David O. Reip

Applicant(s)

SHAOLIAN ET AL.

Art Unit

3733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 10/28/05.
2. ☒ The allowed claim(s) is/are 13-18 and 46-77.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Mr. Rabinder Narula on 1/18/06.

The claims of the application have been amended as follows:

13. A prosthesis for minimally invasive posterior fixation, comprising:

a bone anchor having a head;

a transverse portal extending through opposing sidewalls of said head along an axis transverse to a central axis of said bone anchor, said opposing sidewalls being substantially closed above said transverse portal;

a first segment of a rod extending through said transverse portal, said first segment defining a first surface;

a second segment of a rod having a second complementary surface;

a joint formed at least in part by said first surface and said second surface; and

a locking cap which in response to lateral movement secures said first segment within said portal and fixes the angular relationship of the joint.

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51. The prosthesis of Claim 50, wherein said first segment, said second segment and said third segment include a central lumen, which is configured such that said first second and third segments can travel over a guidewire.

The following is an examiner's statement of reasons for allowance: Claims 13-18 and 46-77 are allowed because the prior art fails to disclose or suggest a prosthesis device for minimally invasive posterior fixation, the device having all the limitations as recited in the above listed claims, including:

With respect to claim 13, a transverse portal extending through opposing side walls of said head along an axis transverse to a central axis of said bone anchor, said opposing side walls being substantially closed above said transverse portal;

With respect to claim 14, wherein said first segment further comprises at least one compression gap;

With respect to claim 60, a locking cap configured such that lateral movement within said head secures said first segment within said portal and fixes the angular relationship of the joint;

With respect to claim 68, means for securing said first segment within said portal and fixing the angular relationship of the joint, and a guidewire lumen extending through said first and second segments of the rod; and

With respect to claim 73, a joint formed at least in part by said first surface and said second surface, said joint configured to allow an angular orientation of said first

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and second segments to be adjusted within a cone having a vertex located between said first and second bone anchors; and a locking cap which in response to lateral movement secures said first segment within said transverse portal of said first bone anchor and fixes the angular relationship of the joint.

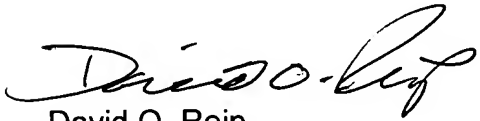
Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David O. Reip whose telephone number is 571-272-4702. The examiner can normally be reached on 7 A.M.- 4:30 P.M. Mon-Thu and every other Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in cursive script, appearing to read "David O. Reip".

David O. Reip
Primary Examiner
AU 3733